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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of ROY C. and JOLYNN HARDIMAN.	
ROY C. HARDIMAN, Respondent, v. JOLYNN HARDIMAN, Appellant.	A133266 (Marin County Super. Ct. No. FL033068)

Jolynn Hardiman and Roy C. Hardiman[1] terminated their marriage in 2005 and stipulated to a judgment on reserved property and support issues that was entered in 2007. Jolynn appeals from postjudgment rulings that (1) Roy's receipt of approximately $14 million in proceeds from his exercise of certain Genentech, Inc. (Genentech) stock options in 2005 and 2009 did not increase his child support obligations for those years; (2) Roy was entitled to $40,000 in attorney fees as sanctions for her litigation conduct; and (3) she was not entitled to fees incurred in the postjudgment proceeding based on Roy's greater wealth. We affirm the trial court's rulings.

I. BACKGROUND

Roy and Jolynn separated in 2003 after more than 10 years of marriage, and Roy initiated a marital dissolution proceeding the same year. They have two minor children

[1] For ease of reference, and meaning no disrespect to the parties, we will refer to them hereafter by their first names.

from the marriage. Roy worked for Genentech throughout the marriage and continued that employment until shortly after Genentech was purchased by Roche Holdings, Ltd. (Roche) in 2009. As a Genentech executive, Roy received a significant part of his compensation in the form of stock option grants issued to him from time to time.

The parties settled support and property issues in stages, culminating in a stipulated judgment on reserved issues entered May 22, 2007 (hereafter 2007 Judgment). In 2010, Roy moved to modify child support because of the change in his employment and an increase in the percentage of time he had physical custody of his daughter. Jolynn responded with a motion seeking child support arrearages, division of an omitted asset, and attorney fees and costs. The present appeal arises from rulings made by the court after an evidentiary hearing on the parties' cross-motions.

A. ***March 2005 Stipulation and Order***

Roy served a preliminary declaration of disclosure with a schedule of assets and debts on April 27, 2004. The disclosure listed all of his Genentech stock options, including option grant No. 048498 issued in 2002 for 45,000 shares, along with the prices at which each numbered option grant could be exercised and the potential gain from exercising them at then current stock prices.[2] Jolynn's forensic accountant, James Sheehy, received an update of the option schedule as of September 24, 2004, which reflected, among other things, the effect of a two-for-one stock split that increased the number of shares in grant No. 048498 to 90,000, of which 45,000 were then exercisable under the terms of the grant.

In November 2004, the parties stipulated to an order for temporary support under which Roy would pay Jolynn $8,026 in family support per month as of November 1, 2004, continuing until further order of the court. This was the guideline amount based on stipulated financial assumptions. The stipulation also provided for community property

[2] Insofar as relevant here, the parties immediately sold all Genentech stock obtained by exercising stock options. The terms "sale" and "exercise" will be used here interchangeably to encompass both the exercise of options and the ensuing sale of the stock obtained.

division of Roy's 2003 bonus of $133,000 received in 2004 and for additional child and spousal support to be payable from Roy's share of bonus income calculated using an agreed "bonus table." The stipulation and order entered by the court on March 15, 2005 included the declarations required by Family Code[3] section 4065, subdivision (a) for court approval of a stipulation for child support below the guideline formula.

B. ***July 2005 Memorandum of Agreement***

Roy supplemented his 2004 asset disclosures with a report by forensic accountant Richard Schiller dated May 31, 2005, which again disclosed all stock options he held, and identified them as the parties' biggest asset on the date of separation, valuing them at over $9 million net of income tax.

On June 23, 2005, the parties stipulated to bifurcation and termination of marital status. On July 27, 2005, the parties entered into a "Memorandum of Agreement" (hereafter 2005 Memorandum of Agreement) concerning the division of assets and liabilities under which they agreed, among other things, to divide the unvested Genentech stock options held on the date of separation according to a method known as the "sequential method," which was originally proposed by Jolynn's counsel and was used by Schiller in preparing his May 31, 2005 report.[4] Under that method, 18,432 unvested shares of grant No. 048498 were classified as community property and the rest (of the 90,000 shares) as Roy's separate property. The Memorandum of Agreement also required Schiller to prepare a report of financial transactions for a period beginning January 1, 2005 and ending when the community bank and brokerage account assets were actually divided.

C. ***2005 Option Sales***

On October 19, 2005, Jolynn instructed Roy to exercise 9,216 shares of grant No. 048498—her half of the shares allocated to the community in the 2005 Memorandum

[3] All further statutory references are to the Family Code unless otherwise indicated.

[4] The report classified options vested on the date of separation as community property and valued them at $3.7 million net of taxes.

of Agreement. Roy executed the sale, resulting in proceeds of $805,745 for Jolynn. In two transactions in November 2005, Roy exercised a total of 40,000 options from grant No. 048498, resulting in approximately $3.8 million in proceeds. On February 1, 2006, Schiller issued a postseparation accounting for the year ending December 31, 2005 per the 2005 Memorandum of Agreement. The accounting reflected both Jolynn's and Roy's 2005 option sales and the allocation of their proceeds, as well as other transactions during the year. The report stated the community interest in grant No. 048498 had been "liquidated in [its] entirety." A copy of the report was provided to Jolynn's attorney and transmitted by the attorney to her forensic accountant within a week thereafter. Sheehy later admitted he did not read the Schiller accounting until November or December of 2006.

D. ***May 2007 Judgment on Reserved Issues***

In August 2006, Roy submitted a final "Declaration of Disclosure and Income & Expense Declaration" (2006 Final Declaration of Disclosure). He reported the number of vested and unvested Genentech options he held as an asset, with a potential aggregate value for the vested options exceeding $10.4 million. His income and expense declaration (covering his income for the preceding 12 months) reported his monthly salary as well as a bonus payment of $190,000 received in 2006, but made no mention of his 2005 option sales. In October 2006, Jolynn moved for an order including the bonus payments Roy received in 2005 and 2006 in calculating additional child and spousal support for those years. The motion was granted by order entered on December 6, 2006. The court found the parties intended (in their March 15, 2005 temporary support stipulation) to include future bonus payments in the calculation of support, not just the 2004 bonus payment, a result which it found "compatible with the law on income available for support."

On December 6, 2006, Jolynn's counsel served a "Bench/Bar Conference Statement" on Roy attaching Schiller's February 1, 2006 accounting report. The statement indicated the parties were disputing the extent of any community interest in Genentech stock options that were unvested on the date of separation.

The bench/bar settlement conference was held on December 20, 2006. The major bone of contention was the method to be used to characterize the Genentech options. Jolynn's accountant, Sheehy, proposed a method known as the "Nelson method" in lieu of the sequential method previously agreed to in connection with the 2005 Memorandum of Agreement. He presented a one-page spreadsheet he had prepared the day before comparing the different allocations of options between separate and community property that would result from using the Nelson method versus the sequential method. The spreadsheet erroneously categorized 80,784 of the stock options from grant No. 048498 as "unsold" (90,000 minus only the 9,216 shares sold by Jolynn). At the settlement conference, the parties agreed Roy would pay Jolynn $500,000 as a "buy-out" of her claim to any additional stock options over those allocated to her as her one-half community interest under the sequential method agreed to in the 2005 Memorandum of Agreement. There was no mention or discussion during the December 2006 settlement proceedings of Roy's options sales from grant No. 048498.

The full settlement terms were read into the record and later incorporated into the 2007 Judgment.[5] A total of 23,825 Genentech stock options allocated to Jolynn in the 2005 Memorandum of Agreement were confirmed as her separate property. These were circled on the Sheehy chart, which was attached as exhibit A to the settlement agreement and designated as "Group 1" on the exhibit. The settlement confirmed 62,411 options that had been claimed as community property by Jolynn under the Nelson method as Roy's separate property by virtue of his agreement to the $500,000 buyout. These were designated as "Group 2" on exhibit A. Besides the agreement concerning the division of options, the parties agreed to the disposition of several parcels of real estate, four vehicles, various accounts, retirement plan benefits, limited partnership investments, and

[5] We grant Roy's motion that we take judicial notice of a reporter's transcript of the oral proceedings on December 20, 2006, at which the parties' settlement of reserved property and support issues was read into the record. The trial court also took judicial notice of the transcript.

personal property collections, with equalizing payments from Roy to Jolynn totaling just over $1 million.

With respect to support issues, the parties agreed to a mutual, permanent waiver of spousal support. Regarding child support, the parties stipulated in paragraph No. 5 of the 2007 Judgment (hereafter Paragraph 5) to certain assumptions as to Roy's base salary, income to be imputed to Jolynn, and unearned income for purposes of calculating a guideline support amount. They agreed Roy would pay additional child support from his "bonus income" according to a bonus table attached to the judgment. Paragraph 5 further provided: "Exercise of the community stock options which are identified as 'Group 3' of Exhibit A, consisting of . . . 260,993 . . . stock options *shall not* be considered as income in any determination of child support. However, the proceeds from ROY's exercise of any separate property stock options, including those identified as 'Group 4' of Exhibit A,[6] consisting of . . . 63,007 . . . stock options *may* be considered as income for purposes of child support. ROY shall provide an accounting of proceeds realized of exercises of separate options for the preceding calendar year by January 10 . . . of each year. . . . [¶] The parties shall attempt to reach an agreement regarding the payment of any additional child support by January 30th, of each year [using a mediator if required]. If no agreement is reached either party may file an action in Court." (Italics added.) Paragraph 5 also included the declarations required by section 4065, subdivision (a) for court approval of a stipulation for child support below the guideline formula.

E. ***Events of 2009***

Genentech was purchased by Roche in March 2009. As a result, all outstanding employee stock options were required to be exercised on October 30, 2009, and Roy's employment with Genentech ended. Roy's gross proceeds from the forced cash out of his stock options were $10,241,825.74. Jolynn's remaining options were also cashed out involuntarily and she realized just over $1 million in proceeds from them in 2009.

[6] Group 4 of exhibit A consisted of the stock options Sheehy had asserted were Roy's separate property under the Nelson method, but by using exhibit A the parties were not agreeing to that characterization.

In September 2009, Jolynn and Roy's minor daughter began to live with Roy on a full-time basis, spending only alternate weekends in Jolynn's care.

F. ***2010 and 2011 Proceedings***

Roy filed a motion to modify child support in May 2010, citing his daughter's change of physical custody and his loss of employment with Genentech. Jolynn filed a cross-motion, alleging Roy had not made a full and accurate disclosure of assets and liabilities because he had failed to disclose his exercise of 40,000 options from grant No. 048498 in 2005, the proceeds he obtained from them, or what he had done with the proceeds. She alleged he failed to disclose that information in his 2006 Final Declaration of Disclosure or in response to discovery requests she made in 2005 and 2006. She further alleged she and her accountants did not become aware of the 2005 sales until January 2010. Jolynn requested relief equal to at least 50 percent of the proceeds of the "omitted asset," and asserted she had brought her claim within three years of the date she acquired actual knowledge of the transactions disposing of 40,000 stock options.[7] (See § 1101, subd. (d)(1).) In addition, Jolynn sought child support arrears for Roy's bonus[8] and stock option income for 2009 and 2010 based on the bonus income schedule made a part of the judgment, and sanctions in the form of her attorney and accountant fees. Jolynn also sought her attorney fees under section 2030 based the parties' respective incomes and abilities to pay.

Roy filed a motion for Code of Civil Procedure section 128.7 sanctions against Jolynn's counsel for filing Jolynn's assertedly baseless "omitted asset" claim, followed by a motion for sanctions under Family Code section 271 in connection with all of the issues raised in Jolynn's cross-motion.

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[7] Jolynn also asserted entitlement to 100 percent on the theory that Roy committed fraud under Code of Civil Procedure section 3294. (See Fam. Code, § 1101, subd. (h).)

[8] As well as receiving a performance bonus in 2009, Roy was paid retention bonuses of $306,850 in 2009 and 2010 pursuant to an employee retention plan.

G. *Trial Court's Rulings*

An evidentiary hearing began in November 2010. Roy brought a motion in limine to exclude portions of the direct testimony of Jolynn's new accounting expert, Stuart Weil, that were based on Jolynn's claim the proceeds of Roy's 2005 options sales were an undisclosed omitted asset subject to the March 2005 stipulation and order for temporary support. After hearing testimony concerning the alleged nondisclosure, the court granted Roy's motion, finding the 40,000 options from grant No. 048498 sold by Roy in 2005, and their proceeds, were not omitted or concealed, there was no legal basis for an award of additional spousal or child support based on them, and such an award would be an "impermissible award of retroactive support." Those findings were later incorporated in the court's statement of decision and order, entered August 12, 2011.

The court found the $306,850 retention bonus Roy was paid in 2009 was subject to the bonus child support table attached to the 2007 Judgment, while the 2010 bonus, which was paid out in installments that year, was subject to a guideline child support calculation, adjusted for the change in the timeshare of their daughter and other changed circumstances in 2010.

Respecting the 2009 forced option exercises, the court ruled it had discretion under Paragraph 5 of the 2007 Judgment to decide whether an award of additional child support based on treating the $10 million as 2009 income for support purposes was appropriate under all the circumstances presented. It found such an award would constitute an unreasonable windfall to Jolynn and result in a support order vastly in excess of the children's needs in 2009 and unnecessary in order for Jolynn to equalize the lifestyle they experienced in Roy's custody. The court noted Jolynn would be receiving bonus child support of $27,295 for 2009 based on Roy's 2009 retention bonus, in addition to the $45,620 she had already received for that year.

Finally, the court denied Jolynn's motion for attorney fees and costs, denied Roy's motion for sanctions under Code of Civil Procedure section 128.7 on procedural grounds, and granted his motion under Family Code section 271 in the amount of $40,000 for fees

incurred in defending against Jolynn's claims for relief based on nondisclosure of the 2005 option sales.

Jolynn timely appealed from the trial court's August 12, 2011 order.

II. DISCUSSION

Jolynn contends the trial court erred in (1) failing to award additional child support based on Roy's 2005 option sales, (2) failing to award additional child support calculated by applying the state's mandatory child support guidelines to Roy's options sales in 2005 and 2009, (3) awarding sanctions against her under section 271, and (4) failing to award her fees under section 2030.

A. *2005 Option Sales*

Jolynn maintains the March 15, 2005 stipulation and order, the child support order in effect at the time of Roy's 2005 options sales, is ambiguous as to whether its provision for the payment of additional child and spousal support based on Roy's 2003 bonus ($133,000 paid in March 2004) also encompasses the proceeds he received from selling separate property stock options from grant No. 048498 later in 2005.

The pertinent language of the stipulation under the heading "Additional Support" dealt exclusively with Roy's 2003 bonus. The stipulation provided half of that bonus was community property because it had been earned before the parties' separation on July 8, 2003, and Jolynn's community share would be payable to her as additional taxable temporary spousal support of $33,250. The stipulation addressed the balance of the 2003 bonus as follows: "The balance of Husband's 2003 bonus, in the amount of $66,500, is subject to additional support obligations. Wife's portion of this portion of the 2003 bonus [equaling a total of $53,323 in total family support] has been determined as follows [showing calculations of $5,368.50 in child support and $14,704.50 in spousal support using a "bonus table" attached to the stipulation and adding the $33,250 paid as taxable temporary spousal support to reach the total of $53,323]. [¶] . . . [¶] Therefore the portion owing to Wife is $53,323.00. Of this amount $47,954.50 shall be considered taxable income to Wife and tax deductible to Husband. $5,368.50 apportioned to child support shall not be tax deductible."

Jolynn does not quote any of this language or explain why we should find ambiguity in it as to whether it also covers Roy's income from selling stock options later in 2005. It is true as Jolynn points out the trial court later determined the stipulation covered "bonus income" Roy received in 2005 and 2006, notwithstanding that its language refers only to the single $133,000 bonus Roy received in 2004. Whether the court's analysis on this point was correct or not is not before us. We find nothing in the 2006 order to suggest the court also found ambiguity as to whether the stipulation covered Roy's postseparation *stock option sales*. When that issue did come before the trial court in 2011, it ruled there was no such ambiguity: "In their March 15, 2005 Stipulation and Order Roy and Jolynn agreed that the bonus support schedule would be applied only to Roy's employment bonuses. This Court may not now add language to the 2005 Order to impose a support obligation which does not appear in that order." The court went on to hold an order extending the 2005 stipulation to cover option sales would be a retroactive modification of support, made impermissible by section 3653.[9]

Jolynn fails to make any affirmative showing the trial court erred in finding the 2005 stipulation unambiguous. She identifies no ambiguity in the text of the stipulation, does not explain how the text is reasonably susceptible to the interpretation she proposes, and does not point us to any extrinsic evidence in the record supporting her interpretation. We find no ambiguity, and would be unable on the showing Jolynn has made, to resolve such an ambiguity in her favor even if we did find it.

Jolynn contends in the alternative that Paragraph 5 of the 2007 Judgment supports her right to additional child support for 2005 based on Roy's stock option sales. She maintains the judgment's child support provisions specifically reserved to the court the right to make an additional child support order based on Roy's receipt of proceeds from

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[9] With exceptions not relevant here, section 3653, subdivision (a) provides: "An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date . . . ." (See also § 3603 [support order may not be modified *except* as to an amount that accrued *before* the date of filing of the notice of motion]; *In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 596.)

the sale of any separate property stock options, including the 40,000 he had sold two years earlier from grant No. 048498. She focuses on the following language from Paragraph 5: "[T]he proceeds from ROY's exercise of any separate property stock options, including those identified as 'Group 4' of Exhibit A, consisting of Sixty-Three Thousand and Seven (63,007) stock options may be considered as income for purposes of child support."[10]

Jolynn ignores the text that immediately followed the quoted language: "ROY shall provide an accounting of proceeds realized of exercises of separate options for the preceding calendar year by January 10 . . . of each year . . . . [¶] The parties shall attempt to reach an agreement regarding the payment of any additional child support by January 30th, of each year [using a mediator if required]. . . . If no agreement is reached either party may file an action in Court." In other words, the provision Jolynn is relying on was intended to operate *prospectively* on separate property stock options Roy exercised from 2007 forward. As to any proceeds from such *future* sales, the 2007 Judgment established a procedure for disclosure of the sales by a date certain, followed by a procedure for the parties to try to reach an agreement about the support implications of the proceeds, followed if no agreement was reached by conferring or mediation, by a court determination of the amount, if any, of additional child support that should be paid on account of the prior year proceeds in dispute. Nothing in the 2007 Judgment appeared to contemplate that proceeds Roy received back in 2005—which had been disclosed to Jolynn's attorney and accountant 10 months before the parties agreed to the terms of the stipulation for judgment —would be subject to a retroactive award of additional child support. Had the parties intended the 2005 proceeds to be covered by the child support provisions of the judgment, they would not have chosen the language used in the judgment which describes a procedure for determining the treatment of Roy's *future*

[10] Jolynn implicitly assumes all 40,000 shares were part of the 63,007 shares shown in Group 4 of exhibit A. Although the record does not necessarily support that assumption, we agree the 2005 proceeds in issue were from Roy's exercise of separate property stock options.

disposition of stock options. In fact, the record shows Jolynn's accountant erroneously believed Roy still held the 40,000 stock options sold in 2005 even though the sales had been disclosed to him.[11] This circumstance merely confirms the stipulated judgment was intended by both parties to cover only Roy's *future* sales. Even if we assume Jolynn would have tried to negotiate a provision for additional support based on the 2005 sales had her attorney or accountant reported them to her in 2006, this affords us no basis to contort the language of the judgment to cover such sales now.

B. ***Failing to Apply State Guidelines***

Drawing on section 4053, Jolynn asserts the court's child support orders must be reversed because they fail to reflect the following principles embodied in the state's mandatory child support guidelines: "In implementing the statewide uniform guideline, the courts shall adhere to the following principles: [¶] (a) A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life. [¶] . . . [¶] (c) The guideline takes into account each parent's actual income and level of responsibility for the children. [¶] . . . [¶] (f) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children. [¶] . . . [¶] (i) It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of available resources for the support of the children. [¶] . . . [¶] (k) The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula. [¶] (*l*) Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states."

[11] As noted earlier, Sheehy's December 2006 spreadsheet classified all of Roy's separate property stock options from grant No. 048498 as "unsold." That is consistent with a declaration Sheehy filed denying he was aware of the 2005 sales before February 1, 2010—even though the sales were shown in Schiller's accounting for calendar year 2005, which Jolynn had attached as an exhibit to her own December 2006 settlement conference statement.

According to Jolynn, the court's failure to consider Roy's $14 million in option sales proceeds (for 2005 and 2009) failed to reflect these principles.

As the opening sentence of section 4053 makes clear, the child support principles Jolynn refers to apply "[i]n implementing the statewide uniform guideline." We need not consider whether the court properly considered these principles because it was not engaged in implementing the guideline, nor was it required to do so. It was applying and enforcing the child support provisions in Paragraph 5 of the parties' stipulated judgment which (1) did not encompass the 2005 sales, for the reasons explained above; and (2) did not *automatically* require Roy's 2009 stock option sales be considered income for child support purposes, but left that threshold determination to the trial court's *discretion*. Paragraph 5 stated Roy's proceeds from future stock option sales "*may* be considered as income for purposes of child support." (Italics added.) Unless and until the trial court found in the exercise of its discretion under Paragraph 5 that Roy's option sales *should be* "considered as income for purposes of child support," the guideline principles set forth in section 4053 never come into play and are irrelevant.

The parties could have specified in the judgment that the court *must* consider guideline principles in exercising its discretion under Paragraph 5, but no such specification was bargained for or made. Jolynn is asking this court in substance to imply as a matter of law a provision the parties never agreed upon. While guideline principles are the norm, the parties may depart from them, in circumstances specified by statute, including by court-approved stipulation. (§§ 4052; 4065, subd. (a).) Here, the parties—both represented by family law specialists—expressly stipulated to a judgment on child support departing from the guidelines, as permitted by section 4065, made the declarations required by that section, jointly applied for and obtained court approval for their stipulation, and had that stipulation entered as part of a final judgment of the court on all reserved issues in 2007. If the parties had intended guideline principles to apply to Roy's stock option proceeds, they would not have set that one form of employment compensation apart in the judgment, leaving it up to the court to decide—if Roy and

Jolynn could not agree—what amount of additional child support, if any, Roy would owe based on it.

Paragraph 5's text—the use of the word "may" rather than "must" or "shall," and the procedures established for the parties to try to reach agreement or a court determination—clearly evidences the parties' intent that in the absence of agreement a court would have full discretion over whether to treat Roy's stock option proceeds as income for child support purposes. The court's discretion was underscored by the colloquy that took place when the stipulation was put on the record, when Jolynn's counsel said Group 4 of exhibit A "identifies separate options of 63,007, which will be considered when exercised as income available for child support." Roy's counsel immediately corrected her: "Which may be considered," and Jolynn's counsel concurred: "May be considered." When these provisions of Paragraph 5 were being negotiated, Jolynn was under no illusions about the potential value of Roy's stock options. She understood during the marriage the "stock options were the largest asset of the marriage by far." Roy's 2006 Final Declaration of Disclosure valued his vested stock options at $10.46 million and disclosed unvested options potentially worth another $5 million when exercisable. Whatever their motivations, the parties bargained for the treatment of Roy's stock option proceeds to be left to court discretion, and we will not rewrite the explicit terms to which they agreed. Accordingly, we find all of Jolynn's arguments based on the assertedly controlling force of guideline principles to be beside the point.

Our review of the court's determination is two-fold. First, we independently review whether the trial court properly construed its role in enforcing Paragraph 5 of the judgment. (*Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351, 372.)[12] Second,

[12] For the first time in oral argument Jolynn asserted that Paragraph 5 was unenforceable as a matter of law under *In re Marriage of Alter* (2009) 171 Cal.App.4th 718, because it purported to oust the court of jurisdiction over child support in the future. Not so. *Marriage of Alter* held that child support orders cannot be made nonmodifiable by agreement. (*Id.* at pp. 726–730.) Nothing in Paragraph 5 or the 2007 Judgment purported to bar Jolynn from seeking later modification of child support, with or without a showing of changed circumstances. (See § 4065, subd. (d).) But that is not what she

we review under an abuse of discretion standard whether the trial court properly exercised the discretion left to it under the judgment. Abuse of discretion review is circumscribed. We consider only whether the court's determinations are supported by substantial evidence and whether the court acted within the bounds of reason in exercising its discretion. "We do not substitute our judgment for that of the trial court, but confine ourselves to determining whether any judge could have reasonably made the challenged order." (*In re Marriage of De Guigne* (2002) 97 Cal.App.4th 1353, 1360; *In re Marriage of Hubner* (2001) 94 Cal.App.4th 175, 184.)

The court found as an initial matter the 2007 Judgment required it to exercise its discretion to determine whether an award of $705,013—the amount of additional child support Jolynn sought for 2009 based on applying the bonus table to Roy's $8,582,807 separate property option proceeds— or some lesser amount, was "appropriate under all the circumstances presented." Our de novo review of the 2007 Judgment leads us to the same conclusion. No ambiguity in the judgment requires resort to extrinsic evidence. The language of Paragraph 5 evidences an intent to give the trial court the broadest possible discretion in (1) determining whether the proceeds of Roy's separate property stock options would be considered income for child support purposes; and (2) if they are to be so considered, in determining how much additional child support is owing on account of them. As to the threshold question—whether the proceeds would be considered income for child support purposes—the trial court analyzed whether considering the proceeds as income is "appropriate under all of the circumstances presented." We find this faithfully carried out the intent of Paragraph 5 by giving the parties wide latitude to bring in whatever facts and evidence they could show were logically relevant to the question of whether Roy's 2009 option proceeds should trigger additional child support obligations, including the involuntary nature of the option sales, whether the children had unmet needs, Jolynn's likely use of the additional child support,

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sought to do in this case. She sought to *enforce* the 2007 Judgment by claiming a share of Roy's 2009 stock option income as child support arrears. Jolynn's belated argument that Paragraph 5 was unenforceable is misplaced.

Roy's use of the sale proceeds, and any disparity in lifestyles between the two parents' households. This gave both parties a fair opportunity to persuade the court as to whether the sale proceeds should be subject to a child support obligation. How the amount of additional child support would or should have been calculated if any of the proceeds in issue had been classified as income for that purpose is not before us.

The court considered evidence of the following circumstances: (1) the substantial amount of child support Jolynn had received in 2009 ($155,610, consisting of $45,610 in base support plus $110,000 in additional child support agreed to for Roy's 2007 and 2008 option exercises) and the additional amount of $27,295 she was being awarded out of Roy's 2009 retention bonus; (2) the extent to which an additional $705,013 in child support to Jolynn for 2009 would in fact be necessary to meet the children's needs or to equalize the lifestyle the children have while in Roy's custody; and (3) based on her testimony and spending pattern in 2009,[13] whether Jolynn's actual motivation in seeking $705,013 in bonus child support was to pay for the children's unmet needs or to increase her own wealth so that she could maintain her existing lifestyle without ever having to return to work. The court concluded the additional $705,013 in child support Jolynn was seeking "would constitute an unreasonable windfall to Jolynn and result in a support order vastly in excess of the children's needs in 2009," and unnecessary for Jolynn to replicate the children's lifestyle in Roy's custody.

Jolynn contends the court's reasons were insufficient because (1) there was no evidence she was neglecting the children's needs, and (2) how she was likely to spend the additional child support was not a basis to deviate from the guideline. We agree the evidence did not show Jolynn was neglecting the children's needs. But as we read the statement of decision, the trial court did not draw or rely upon any such inference from

[13] The court cited evidence that in 2009 Jolynn paid down principal on her home mortgage, paid over $239,000 for home improvements, and increased her net worth by $300,000 to $400,000. Jolynn testified she (1) did not want to have to work, and (2) hoped to have enough of her estate left once she no longer had financial responsibility for the children that she could continue to live her accustomed lifestyle without working.

the evidence. The court focused instead on whether providing Jolynn a total of nearly $900,000 in child support for a single year, for two healthy children who in combination lived with her for substantially less than 50 percent of the time, was necessary to meet any unmet needs of the children, or was in fact likely to be used to benefit them. While these factors may be irrelevant for guideline purposes, we cannot say it was outside the bounds of reason for the trial court to consider them in trying to carry out the intent of the parties' stipulated judgment.

We find substantial evidence supports the trial court's findings. There was credible evidence the parents' homes are similar in value and offer equivalent amenities. The children both attend public schools and both are healthy and have no special needs. While Roy took the children on a one-time extraordinary vacation to Africa and London, Jolynn also took them on vacations to Hawaii, Virgin Gorda in the British Virgin Islands, and possibly Mexico (although Jolynn was not sure the Mexico trip took place in 2009). In 2009, Jolynn had investment earnings of $483,880, and sold Genentech options for proceeds of $549,023, in addition to receiving child support payments of $155,610. At the same time, all of her child-related expenses for the year came to $186,964 according to the testimony of Roy's expert, of which $103,125 went for home mortgage payments. This evidence substantiates the court's conclusions that an additional $700,000 in child support would be a windfall to Jolynn that would not be used to fill unmet child support needs and was not necessary to equalize the children's experiences in the parents' households.

We find no legal error or abuse of discretion in the trial court's determination that none of the proceeds of Roy's 2009 forced stock option sales would be considered income for child support purposes under the 2007 judgment.

C. *Section 271 Sanctions*

Section 271 provides in pertinent part as follows: "[T]he court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties

and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction." (§ 271, subd. (a).)

A sanctions order under section 271 is reviewed for abuse of discretion. (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225.) We will overturn such an order only if, considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order. (*Id.* at pp. 1225–1226.)

Here, the trial court imposed section 271 sanctions against Jolynn of $40,000 attributable to the fees Roy incurred to defend the portion of her cross-motion alleging Roy's nondisclosure of his 2005 stock option sales. The court found the motion was not reasonable, not supported by evidence, and not supported by law. For the reasons discussed earlier, we agree Jolynn's "omitted asset" claims were baseless as a matter of fact and law. Not only did Roy timely disclose the sales and proceeds to Jolynn, but her "omitted asset" claims would have had no legal substance even if the sales had not been properly disclosed, since the options Roy sold had been allocated to him as his separate property by agreement with Jolynn in 2005. Further, her persistence in those claims after Roy's 2006 disclosure of his option sales was first called to her attention caused Roy to incur needless litigation expenses that cannot be attributed to mere inadvertence by Jolynn's former counsel and forensic accountant.

Viewing the evidence most favorably in support of the trial court's ruling and indulging all reasonable inferences in its favor, we find the trial court did not abuse its discretion in sanctioning Jolynn under section 271.

D. *Failure to Award Fees Under Section 2030*

Section 2030 provides in relevant part as follows: "[I]n any [related] proceeding subsequent to entry of a . . . judgment [in a marital dissolution action], the court shall ensure that each party has access to legal representation . . . to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party . . . whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the

proceeding. [¶] . . . When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. . . ." (§ 2030, subds. (a)(1), (2).)

We review an attorney fee award under section 2030 for abuse of discretion. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1166 (*Drake*).) The trial court's decision in a particular case will not be disturbed on appeal absent a clear showing of abuse of discretion. (*In re Marriage of Bergman* (1985) 168 Cal.App.3d 742, 763.) We must affirm the court's order unless " 'no judge could reasonably make the order made.' " (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 769.)

In making a determination under section 2030, the trial court may consider all evidence concerning the parties' current incomes, assets, and abilities, including investment and income-producing properties, as well as the applicant's litigation tactics. (*Drake, supra,* 53 Cal.App.4th at p. 1167.) A disparity between the parties' relative circumstances may support an award even if the applicant spouse has the funds to pay his or her own fees. (*Ibid.*; § 2032, subd. (b).)

In its statement of decision, the trial court analyzed Jolynn's fee request under section 2030 as follows: "Good cause has not been demonstrated for a need based fee award pursuant to Family Code § 2030. According to her income and expense declaration Jolynn had liquid assets of $2,900,000 when her motion was filed and at all times she had sufficient financial resources to pay for her own representation. Moreover, nearly all of the claims asserted by Jolynn in this post Judgment proceeding were without substantial merit. The exercise of discretion by the Court in the matter of attorney fees includes an evaluation of whether counsel's skill and effort were wisely devoted to the disposition of the case. Services which have no apparent effect other than to prolong and complicate litigation cannot be deemed reasonably necessary and may be disregarded in

determining whether and in what amount to order one party to contribute to the cost of the other's representation. *In re Marriage of Behrens* (1982) 137 C.A.3d 562."

Jolynn argues the court made unsupported findings on the appropriateness of awarding fees to her based on its rejection of the positions she had taken in the litigation, and failed to make findings concerning either the disparity in wealth between her and Roy or whether Roy was financially capable of paying for the legal representation of both parties. (See § 2030, subd. (a)(2).) For the latter point, she cites *In re Marriage of Sorge* (2012) 202 Cal.App.4th 626 (*Sorge*) in which the Court of Appeal affirmed a need-based fee order to a wife with $14 million in assets and income in excess of $30,000 per month, based on the fact the husband was far wealthier. (*Id.* at pp. 633, 636–637, 662.) The court in *Sorge* noted the husband had $64 million in liquid assets compared to the wife's $7.5 million in liquid assets, and relied primarily on this wealth disparity to find the trial court had not abused its discretion. (*Id.* at p. 663.)

We do not find *Sorge* persuasive in the circumstances presented here. First, *Sorge* merely found an award of fees to a very wealthy ex-spouse was within the trial court's discretion under section 2030 since the payor was eight times wealthier. It did not hold the trial court would have abused its discretion had it *denied* a fee award to the less wealthy spouse in those circumstances. Second, *Sorge* did not involve a wealth disparity comparable to that shown in the record here. According to the parties' 2011 financial disclosures, Jolynn reported assets of $5 million including liquid investments and real estate, while Roy's net worth was under $9 million on a comparable basis. While Jolynn asserts the "ratio of the parties' relative net worth in this case is about the same as it was in *Sorge*," she fails to substantiate that point with any citation to facts in the record. Jolynn fails to establish the trial court abused its discretion in denying her a fee award based on the parties' relative net worth. (Cf. *In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 631 [well within trial court's discretion to deny wife's fee request

where husband had superior ability to pay, but both parties had adequate resources to litigate the controversy].)[14]

Jolynn also maintains the trial court abused its discretion by judging the merits and good faith of her litigation positions too harshly. However, whether Jolynn's fees were incurred wisely toward an expeditious resolution of the case is a relevant factor under section 2030. (*In re Marriage of Kelso* (1998) 67 Cal.App.4th 374, 384–385.) Since it does appear at least some of the positions Jolynn took in the litigation lacked substantial merit and resulted in lengthier litigation and avoidable fees, we cannot say the trial court abused its discretion by relying in part on this factor to deny Jolynn's fee request.

III. DISPOSITION

The postjudgment order of August 12, 2011 is affirmed.

_____
Margulies, J.

We concur:

_____
Marchiano, P.J.

_____
Banke, J.

[14] We agree the trial court's findings did not reflect a full comparative analysis of the parties' assets and abilities to pay, but we find any error in that regard harmless in light of the facts in the record.